

## **REMARKS**

Claims 1-11 and 14-43 are pending, claims 12 and 13 having been previously cancelled, and claims 3, 10, 11, 16-28 and 34-37 having been withdrawn from consideration. Claims 1, 2, 4-15, 29-33 and 38-41 having been elected by applicants pursuant to the May 12, 2004 Response to Restriction/Election Requirement posed in this application. Claims 1, 4-8 and 29-33 are amended. No new matter is submitted. Accordingly, entry and consideration of the amendment is respectfully requested.

Applicants' appreciate the entry of the RCE filed September 6, 2005 and the After Final Amendment filed August 5, 2005 in this matter as indicated in item 1 of the Office Action.

In items 2 and 3 of the Office Action, claims 4 and 7 are rejected under 35 U.S.C. 101 as allegedly directed to non-statutory subject matter with respect to the recitation of "... an adhesive disposed between an outer surface of the first vessel...". Claims 4 and 7 are amended to recite that the adhesive is "...adapted to be disposed between an outer surface of the first vessel....", as recommended in the Office Action. Accordingly, withdrawal of the 35 U.S.C. 101 rejection of claims 4 and 7 is respectfully requested.

In items 4 and 5 of the Office Action, claims 1, 2, 4, 5, 7-9, 14, 15, 29-33, 38, 39 and 41-43 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 6,117,147 to Simpson, et al. (hereafter "Simpson") in view of U.S. Patent Publication No. 2001/0044631 to Akin, et al. (hereafter "Akin"). The rejection is respectfully traversed.

Applicants' independent claim 1 recites a device for creating an anastomosis between first and second vessels comprising, *inter alia*, an extravascular body having an outer surface and an inner surface, the inner surface forming an opening configured to contact an outer surface a portion of the first vessel received therein, first securing means for securing at least an

end of the first vessel to the opening, and second securing means for securing a portion of the second vessel to a corresponding portion of the outer surface of the body such that a hole formed in the portion of the second vessel is in fluid communication with the first vessel. Applicants' independent claim 29 recites a method for creating an anastomosis between first and second vessels comprising, *inter alia*, attaching a portion of the first vessel to an extravascular body having an opening therethrough, the opening being configured to receive and contact the portion of the first vessel and the extravascular body further comprising an outer surface at least a portion of which is configured to contact a portion of the second vessel, and attaching the portion of the second vessel to the corresponding portion of the outer surface of the body, and creating an anastomosis between the first and second vessels through the opening in the body. In both of independent claims the extravascular body is comprised at partly of resorbable sponge material. Thus, the portion of the first vessel is received within and contacted by the opening of the extravascular body in Applicants' independent claims 1 and 29. All other pending claims depend directly or indirectly from claims 1 and 29.

Simpson discloses a device 14 for reinforcing an anastomotic site and vascular graft vessel 10. The device 14 is comprised of a cuff 18, a body 16 and a sleeve 12, whereby an outer surface of a cuff 18 is adhered to an anastomotic site 24 (col. 3, lines 28-31 & Figs. 2, 3, 4B& 5A). The body 16 is then adhered to the cuff 18, and the sleeve 12 is then adhered to the body 16 (col. 3, lines 59-61 & Fig. 4A). The sleeve 12, body 16 and cuff 18 thus receive the graft vessel 10 and help orient the graft vessel relative to the anastomotic site 24, but do not secure or attach the graft vessel 10 to any portion thereof. Rather, only an outer surface of the cuff 18 is disclosed as being secured to any portion of the vasculature in Simpson. Notwithstanding the assertion raised in the Response to Arguments section of the Office Action,

i.e., item 8 of the Office Action, neither the cuff 18, nor the sleeve 16, of Simpson receives and contacts an outer surface of a first or second vessel as recited in Applicants' independent claims 1 and 29. Rather, the sleeve 16 of Simpson receives an end portion of a graft 10, while the cuff 18 of Simpson is attached to, but does not receive, the aorta 22 (using the same Fig. 5B of the Office Action). Simpson thus fails to teach or suggest the combination of features recited in each of independent claims 1 and 29, from which all other pending claims directly or indirectly depend. Further, as the Office Action concedes, Simpson fails to teach a resorbable body as also recited in Applicants' claims 1 and 29. Further still, the polymer referred to in items

Akins is applied for the resorbable aspect of its anastomotic device. Akins however, teaches an *intravascular* device 1 (emphasis added) that fails to overcome the deficiencies of Simpson detailed above. Notwithstanding any assertions to the contrary, Akins fails to disclose an *extravascular* resorbable body to which a first vessel and a second vessel are secured, as recited in each of independent claims 1 and 29 of Applicants' invention. Nor is there any motivation to combine the resorbable aspects of Akins with Simpson, as they comprise exactly opposite applications, i.e., intravascular (Akins) versus extravascular (Simpson). Moreover, nothing in Akins discloses or suggests receipt and contact of a vessel as in Applicants' independent claims 1 and 29, as the device in Akins is received within the respective vessels (Fig. 2) rather than having the device receive a vessel as claimed.

Accordingly, neither of Simpson nor Akins, alone or in combination, teach, disclose or suggest the combination of features recited in independent claims 1 and 29 of Applicants' invention, from which all remaining claims depending. Accordingly, withdrawal of the 35 U.S.C. §103 (a) rejection of claims 1, 2, 4, 5, 7-9, 14, 15, 29-33, 38, 39 and 41-43 based on the combination of Simpson and Akins is respectfully requested.

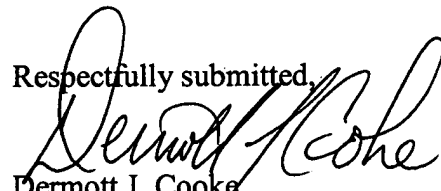
In item 6 of the Office Action, claims 6 and 40 are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Simpson in view of Akins, and further in view of U.S. Patent Publication No. 2002/0065545 to Leonhardt, et al.(hereafter "Leonhardt"). The rejection is respectfully traversed.

Independent claims 1 and 29 of applicants' invention are discussed above, from which claims 6 and 40 indirectly respectively depend. Likewise, Simpson and Akins are discussed above. Leonhardt is applied for teaching a balloon catheter for urging inner member towards outer members, but fails to overcome the deficiencies of Simpson and Akins as detailed above. Accordingly, withdrawal of the 35 U.S.C. §103(a) rejection of claims 6 and 40 based on the combination of Simpsons, Akins and Leonhardt is respectfully requested.

Applicants submit that the claims presented patentably distinguish over the art applied and pose no 35 U.S.C. §112 issues. Accordingly, prompt allowance of this application is respectfully requested.

Should the Examiner determine that anything further is desirable to place this application in even better form for allowance, the Examiner is invited to contact the undersigned at the telephone number indicated below.

Respectfully submitted,

  
Dermott J. Cooke  
Registration No. 41,685

Scully, Scott, Murphy & Presser, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343  
DJC/jam